RECENT IMPORTANT DECISIONS

AGENCY—LIABILITY OF PRINCIPAL FOR UNKNOWN DECEIT OF AGENT.—Action of tort for deceit. Hay shipped to the plaintiff was, without negligence, damaged in transportation. The agent of the defendant railway sent notice of arrival of the goods, giving the number of the car and initials as though goods had come through in the car in which they had been shipped; no notice was given of the injury and transfer to another car. The plaintiff paid to the bank the draft accompanying the bill of lading, relying on the notice. On discovering the damaged condition of the hay, he rejected it and brought suit for damages caused by paying the draft. *Held*, that the principal, although it would be liable in contract is not liable for the tort of the agent *in an action of deceit*, without bringing home to the principal knowledge of the fraud. *White* v. *State*, (1902),—N. J. L.—, 52 Atl. Rep. 216

The court cite two English authorities for this view of the question. *Udell* v. *Atherton*, 7 H. and N. 172; *Western Bank of Scotland* v. *Addie*, L. R. 1 Sc. App 146. The following New Jersey cases are also favorable: *Kennedy* v. *McKay*, 43 N. J. Law, 288; *Titus* v. *Cairo R. R. Co.* 46 N. J. L. 393, 420; *Decker* v. *Fredericks*, 47 N. J. L. 469, 1 Atl. Rep. 470; *Marsh* v. *Beecham*, 46 N. J. Eq. 595, 22 Atl. Rep. 128.

The New Jersey rule is exceptional, the weight of anthority in the United States being against it. MECHEM ON AGENCY, § 743 and cases there cited, 101 Ind, 293, 37, Wis. 548 and others; STORY ON AGENCY, § 452. See also *Jeffrey* v. *Bigelow*, 13 Wend. 518, 28 Am. Dec. 476; *Griswold* v. *Gebbie*, 126 Pa. St. 353, *Durst* v. *Burton*, 47 N. Y. 167, 7 Am. Rep. 428.

ACTION—SPLITTING CAUSES OF—INJURY TO PERSON AND PROPERTY.—Plaintiff while riding sustained injuries both to his person and his vehicle through the negligence of the defendant. He brought an action to recover for the injury to his person and later brought another action for the injury to his vehicle. In this last action judgment was obtained and paid. Defendant then by supplemental pleadings interposed this judgment as a bar to the first action and the lower courts held it to be a bar (14 App. Div. Rep. 242). On appeal to the court of appeals; *Held*, that it is not a bar and that both actions may be maintained. *Reilly* v. *Sicilian Asphalt Paving Co.* (1902), 170 N. Y. 40, 62 N. E. Rep. 772, 57 L. R. A. 176.

This judgment reverses that in the case referred to in a previous number, 1 MICH. LAW REV. 74, and puts New York in line with the English holding in *Brunsden* v. *Humphrey*, 14 Q. B. Div. 141. The cases in Massachusetts, Minnesota and Missouri are conceded to be the other way. *Doran* v. *Cohen*, 147 Mass. 342, 17 N. E. 647; *King* v. *Chicago, etc. Ry. Co.*, 80 Minn. 83, 1 MICH. LAW REV. 74; *VonFragstein* v. *Windler*, 2 Mo. App. 598.

ATTORNEY AND CLIENT—JURISDICTION OF EQUITY OVER.—Through an error in the preparation of a decree for divorce no provision for alimony was made. The complainant employed an attorney to have the decree amended so as to provide for alimony; and to institute suits against the husband to secure the payment. The attorney was also given power of attorney to effect a settlement. His fee was to be one-third the alimony recovered, or one-half in case of protracted litigation. After several suits, a settlement was made by the opposing attorneys whereby the husband was to pay to the wife forty thousand dollars. The attorney for the wife retained his share according to

their agreement and remitted the balance to his client. She refused to accept it and filed her petition in the court of chancery to compel the attorney to pay over to the court the entire amount received in the settlement. *Held*, that the court of equity has jurisdiction to exercise summary power over the attorney to compel him to bring into court the moneys so retained, and that the contract for a contingent fee out of the alimony awarded is contrary to public policy and void. *Lynde* v. *Lynde*: *In re Westervelt*, (1902),— N.J. Eq. —, 52 Atl. Rep. 694.

This case seems to extend the jurisdiction of equity in exercising its summary powers as stated in *Strong* v. *Mundy*, 52 N. J. Eq. 833, which held, "that in order to justify the exercise of summary jurisdiction of a court of equity over a solicitor . . . . his conduct must be clearly illegal, dishonest or oppressive;" and also the doctrine stated in *In re Paschal*, 10 Wall (U. S.) 483, "that a motion to pay into court the moneys collected will not be granted if the attorney is guilty of no bad faith or improper conduct."

The principle, as determined by this case, would seem to be that a court of equity has jurisdiction to exercise its summary powers over an attorney whenever there exists any relation of trust and confidence between the attorney and his client.

Upon the second point—that the contract was opposed to public policy—the court cite with approval *Jordan* v. *Westerman*, 62 Mich. 170, 28 N. W. Rep. 826, 4 Am. St. Rep. 836.

BANKS AND BANKING—CASHIER—NOTICE.—Action on a promissory note executed by defendant, H., payable to the V. Coal Co., a corporation, and given without consideration. Plaintiff bank discounted the note at the time of its execution. The cashier of the bank who discounted the note, was also president of V. Coal Co., and knew of the infirmities of the note. H. defends on ground that knowledge of cashier was knowledge of the bank. *Held*, that the knowledge of the cashier, who was acting in a dual capacity, was not imputable to the bank. *People's Sav. Bank* v. *Hine* (1902),—Mich.—, 91 N. W. Rep. 130.

The court bases its decision upon the cases of *Bank* v. *Montgomery*, 126 Mich. 327, 85 N. W. 879, and *Innerarity* v. *Bank*, 139 Mass. 332, 1 N. E. 282, 52 Am. Rep. 710, and cases there cited. The present case seems to be distinguishable from these, in that the cashier did not own the note, nor did he present it for discount. When it was so presented he was acting as the agent of the bank. In the cases cited, the bank official was himself the party presenting the paper for discount; and in most of the cases, was its owner. *Bank* v. *Montgomery*, supra; *West Boston Sav. Bank* v. *Thompson*, 124 Mass. 506; *Bank* v. *Babbidge*, 160 Mass. 563, 36 N. E. 462. The decision, would, however, seem to be justified by the interest which the cashier, as its president, had in the corporation. *Innerarity* v. *Bank*, supra; *Stevenson* v. *Bay City*, 26 Mich. 44.

CARRIERS—LIMITING LIABILITY—EFFECT OF LIMITATION IN CASE OF DELIVERY AFTER NOTICE TO STOP IN TRANSIT.—A contract of carriage—a bill of lading—limited the liability of the carrier for a loss to a specified amount. *Held*, that this limitation affects neither the shipper's right of action against the common carrier for negligence in delivering the goods after due notice from the shipper, agreed to by the carrier, to stop them in transit, nor the amount of the carrier's liability for such delivery; as the action was founded on the tortious act of the carrier and not on the contract of carriage, the undertaking to stop the goods being independent of such contract, and the notification by